

Article 59.

Vocational Rehabilitation Services.

§ 143-545: Repealed by Session Laws 1995, c. 403, s. 1.

§ 143-545.1. Purpose, establishment and administration of program; services.

(a) Policy. – Recognizing that disability is a natural part of human experience, the State establishes as its policy that individuals with physical and mental disabilities should be able to participate to the maximum extent of their abilities in the economic, educational, cultural, social, and political activities available to all citizens of the State. To implement this policy, the Department of Health and Human Services shall establish and operate comprehensive and accountable programs of vocational rehabilitation and independent living for persons with disabilities. These programs are to be administered by the Division of Vocational Rehabilitation Services in collaboration with the Division of Services for the Blind, which conducts vocational rehabilitation and independent living programs for individuals who are blind or visually impaired, pursuant to Chapter 111 of the General Statutes and the rules of the Commission for the Blind adopted pursuant to G.S. 143B-157. The programs so provided shall be administered according to the following principles:

- (1) The opportunity and ability to work and to live independently are important activities that enhance not only the lives of individuals with disabilities but also the greater society in which they live. These activities fulfill the need to be productive, promote self-esteem, and allow for participation in the full array of activities of daily living;
 - (2) Eligible individuals with disabilities shall be provided individualized training, independent living services, and educational and support services that prepare them for independent living and competitive employment opportunities in integrated settings with reasonable accommodations;
 - (3) Individuals with disabilities shall be active participants in their own vocational rehabilitation/independent living programs and shall be involved in making meaningful and informed choices about vocational/independent living goals and objectives and the related services they receive; and
 - (4) As full partners in their vocational rehabilitation and independent living programs, participants in the programs shall provide information required by the Department to determine eligibility and the nature of their disabilities, shall use other resources that are available to assist in their programs, and shall assume joint responsibility with departmental staff for planning and implementing their programs.
- (b) Services: –
- (1) Vocational rehabilitation and independent living services provided by the Department shall address comprehensively the needs of each individual to the maximum extent possible within available resources. These services shall contain labor force development and training components and services that enhance the independence and full participation of citizens with disabilities in community life. Specific services shall include assessment services to determine eligibility and rehabilitation needs; counseling, guidance, and referral services; physical and mental restoration services; reader services; vocational and other training services; job development and job placement

services; interpreter services; on-the-job or other related personal assistance services including attendant care services; mobility and rehabilitation technology services; training services necessary for living in the community; and supported employment services.

- (2) The Secretary of the Department of Health and Human Services shall adopt rules to establish eligibility for services, the nature and scope of services to be provided, standards for community rehabilitation programs and qualified personnel to provide services and conditions, criteria, and procedures under which services may be provided including financial need for services. Rules governing financial need for services shall meet the requirements set in federal law and regulations.
- (3) The Secretary of the Department of Health and Human Services or, when appropriate, the Commission for the Blind, shall establish by rule a formula for a schedule of rates and fees to be paid by clients and other third party purchasers for services.
- (4) The Secretary of the Department of Health and Human Services or, when appropriate, the Commission for the Blind, shall establish formal appeals procedures that are consistent with those required by federal regulations so that any applicant for or client of vocational rehabilitation or independent living services who is dissatisfied with any determinations made by rehabilitation counselors or coordinators concerning the furnishing or denial of services may request a timely review of those determinations. The appeal procedures shall be the same regardless of whether federal funds are included in the particular services. (1995, c. 403, s. 1(b); 1997-443, s. 11A.118(a); 1997-456, s. 27; 1999-161, s. 1.)

§ 143-546: Repealed by Session Laws 1995, c. 403, s. 2(a).

§ 143-546.1. Duties of Secretary; cooperation with federal rehabilitation services administration or successor.

(a) [Duties of Secretary]. – In carrying out the purposes of this Article, the Secretary of the Department of Health and Human Services shall:

- (1) Ensure the cooperation of other divisions in the Department of Health and Human Services in implementing the provisions of this Article;
- (2) Cooperate with other departments, agencies, and institutions, both public and private, in providing for the vocational rehabilitation and independent living of individuals with disabilities, in studying the problems involved, and in establishing, developing, and providing the programs, facilities, and services necessary to implement this Article;
- (3) Conduct research and gather statistical data related to the vocational rehabilitation and independent living needs of individuals with disabilities; and
- (4) Administer the expenditure of funds made available by appropriations by the General Assembly by grants from the federal government, and by gifts, grants, or reimbursements from private or public sources, or other sources, and any combination thereof for vocational rehabilitation and independent living services. Gifts or donations, from either public or private sources, as may be

offered unconditionally or under conditions that are proper and consistent with this Article, shall be deposited in the State treasury in a fund to be known as the "Vocational Rehabilitation and Independent Living State Program Fund".

(b) Federal Funds. – In accepting federal funds provided under the Rehabilitation Act of 1973, as amended, the State accepts all of the provisions and benefits of the Act. The Department of Health and Human Services shall:

- (1) Cooperate with the Federal Rehabilitation Services Administration or its successor agency in the administration of the Rehabilitation Act of 1973, as amended;
- (2) Administer vocational rehabilitation and independent living services provided in cooperation with the Federal Rehabilitation Services Administration or its successor agency through an approved State plan;
- (3) Adopt rules as required by the Rehabilitation Act of 1973, as amended, and federal regulations promulgated pursuant to it. (1995, c. 403, s. 2(b); 1997-443, s. 11A.118(a).)

§ 143-547. Subrogation rights; withholding of information a misdemeanor.

(a) Notwithstanding any other provisions of law, to the extent of payments under this Article, the State Vocational Rehabilitation program shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of the assistance, or his personal representative, his heirs, or the administrator or executor of his estate, against any person; provided, however, that any attorney retained by the beneficiary of the assistance shall be compensated for his services in accordance with the following schedule and in the following order of priority from any amount obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of such injury or death:

- (1) First to the payment of any court costs taxed by the judgment;
- (2) Second to the payment of the fee of the attorney representing the beneficiary making the settlement or obtaining the judgment, but this fee shall not exceed one-third of the amount obtained or recovered to which the right of subrogation applies;
- (3) Third to the payment of the amount of assistance received by the beneficiary as prorated with other claims against the amount obtained or received from the third party to which the right of subrogation applies, but the amount shall not exceed one-third of the amount obtained or recovered to which the right of subrogation applies; and
- (4) Fourth to the payment of any amount remaining to the beneficiary or his personal representative.

The United States and the State of North Carolina shall be entitled to shares in each net recovery under this section. Their shares shall be promptly paid under this section and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) In furnishing a person rehabilitation services, including medical case services under this Chapter, the Division of Vocational Rehabilitation Services is subrogated to the person's right of recovery from:

- (1) Personal insurance;
- (2) Worker's Compensation;

- (3) Any other person or personal injury caused by the other person's negligence or wrongdoing; or
- (4) Any other source.
- (c) The Division of Vocational Rehabilitation Services' right to subrogation is limited to the cost of the rehabilitation services provided by or through the Division for which a financial needs test is a condition of the service provisions. Those services that are provided without a financial needs test are excluded from these subrogation rights.
- (d) The Division of Vocational Rehabilitation Services may totally or partially waive subrogation rights when the Division finds that enforcement would tend to defeat the client's process of rehabilitation or when client assets can be used to offset additional Division costs.
- (e) The Division of Vocational Rehabilitation Services may adopt rules for the enforcement of its rights of subrogation.
- (f) It is a Class 1 misdemeanor for a person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the Division of Vocational Rehabilitation Services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise. (1989, c. 552; 1993, c. 539, s. 1036; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 143-548. Vocational Rehabilitation Council.

(a) There is established the Vocational Rehabilitation Council within the Division of Vocational Rehabilitation Services to be composed of not more than 18 appointed members. Appointed members shall be voting members except where prohibited by federal law or regulations. The Director of the Division of Vocational Rehabilitation Services and one vocational rehabilitation counselor who is an employee of the Division shall serve ex officio as nonvoting members. The President Pro Tempore of the Senate shall appoint six members, the Speaker of the House of Representatives shall appoint six members, and the Governor shall appoint five or six members. The appointing authorities shall appoint members of the Council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities. Terms of appointment shall be as specified in subsection (d1) of this section. Appointments shall be made as follows:

- (1) The six members appointed by the President Pro Tempore of the Senate shall include one member recommended by the North Carolina Chamber, one other representing providers of community rehabilitation services, one other who is a vocational rehabilitation counselor, with knowledge of and experience with vocational rehabilitation programs, who is not an employee of the Division, one other representing the Commission on Workforce Preparedness, and two others representing disability advocacy groups representing a cross-section of individuals with physical, cognitive, sensory, and mental disabilities. Of the six members appointed by the President Pro Tempore of the Senate, three shall be individuals with disabilities;
- (2) The six members appointed by the Speaker of the House of Representatives shall include one member representing the business and

industry sector, one other representing labor, one other representing a parent training and information center established pursuant to section 631(c) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1431(c), one other representing the Department of Public Instruction, and two others representing disability advocacy groups representing a cross-section of individuals with physical, cognitive, sensory, and mental disabilities. Of the six members appointed by the Speaker of the House of Representatives, three shall be individuals with disabilities; and

- (3) The five or six members appointed by the Governor shall include one member representing the business and industry sector, one other representing the regional rehabilitation centers for the physically disabled, one other representing the Division's Statewide Independent Living Council, one other representing the State's Client Assistance Program, one other representing the directors of projects carried out under section 121 of the Rehabilitation Act of 1973, 29 U.S.C. § 741, as amended, if there are any of these projects in the State, and one other current or former applicant for or recipient of vocational rehabilitation services. If five members are appointed by the Governor, three shall be individuals with disabilities. If six members are appointed by the Governor, four shall be individuals with disabilities.

(b) Repealed by Session Laws 1993, c. 248, s. 1.

(b1) Additional Qualifications. – In addition to ensuring the qualifications for membership prescribed in subsection (a) of this section, the appointing authorities shall ensure that a majority of Council members are individuals with disabilities and are not employed by the Division of Vocational Rehabilitation Services.

(c) The Council shall elect one of the voting members of the Council as Chair of the Council. The Chair's term shall not exceed a single three-year term.

(d) The Council shall meet at least quarterly and at other times at the call of the Chair. A majority of the voting members of the Council constitutes a quorum.

(d1) Terms of Appointment. –

- (1) Length of Term. – Each member of the Council shall serve for a term of not more than three years, except that:

- a. A member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed shall be appointed for the remainder of that term;
- b. The terms of service of the members initially appointed are as specified by the appointing authority for a fewer number of years as will provide for the expiration of terms on a staggered basis and shall include the members of the existing Council to the extent possible with appropriate adjustments to their terms;
- c. The appointing authority shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16; and

- d. A member may continue to serve until a successor for the position is appointed;
- (2) Number of Terms. – No member of the Council other than the representative of the Client Assistance Program, the representative of a parent training and information center, and the representative of the directors of projects carried out under section 121 of the Rehabilitation Act of 1973, 29 U.S.C. § 741, as amended, may serve more than two consecutive full terms.
 - (d2) Vacancies. – Any vacancy occurring in the membership of the Council shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Council.
 - (d3) Functions of Council. – The Council shall, after consulting with the Commission on Workforce Preparedness:
 - (1) Review, analyze, and advise the Division regarding the performance of its responsibilities under Title I of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 29 U.S.C. § 720, et seq., as amended, particularly responsibilities relating to:
 - a. Eligibility, including order of selection;
 - b. The extent, scope, and effectiveness of services provided; and
 - c. Functions performed by State agencies that affect or that potentially affect the ability of individuals with disabilities in achieving employment outcomes under Title I of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 29 U.S.C. § 720, et seq.;
 - (1a) In partnership with the Division:
 - a. Develop, agree to, and review State goals and priorities in accordance with section 101(a)(15)(C) of the Rehabilitation Act of 1973, 29 U.S.C. § 721(a)(15)(C); and
 - b. Evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Commissioner of the Rehabilitation Services Administration of the U.S. Department of Education in accordance with section 101(a)(15)(E) of the Rehabilitation Act of 1973, 29 U.S.C. § 721(a)(15)(E);
 - (2) Advise the Department of Health and Human Services and the Division regarding activities authorized to be carried out under Title I of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 29 U.S.C. § 720, et seq., as amended and assist in the preparation of applications, the State Plan, amendments to the plans, reports, needs assessments, and evaluations required by Title I of the Rehabilitation Act of 1973;
 - (3) To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with:
 - a. Vocational rehabilitation functions and services provided by the Department of Health and Human Services and other State agencies and public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the

- Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355, 29 U.S.C. § 701, et seq.; and
 - b. Repealed by Session Laws 1999-161, s. 2, effective June 8, 1999.
 - c. Employment outcomes achieved by eligible individuals receiving services under Title I of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 29 U.S.C. § 720, et seq., as amended, including the availability of health and other employment benefits in connection with those employment outcomes;
- (4) Prepare and submit an annual report to the Governor and the Commissioner of the Rehabilitation Services Administration of the U.S. Department of Education on the status of vocational rehabilitation programs operated within the State and make the report available to the public;
 - (5) Coordinate activities with the activities of other councils within the State, including the Division's Statewide Independent Living Council established under section 705 of the Rehabilitation Act of 1973, 29 U.S.C. § 742, the advisory panel established under section 612(a)(21) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1413(a)(12), the State Development Disabilities Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 6024, the State Mental Health Planning Council established under section 1914(a) of the Public Health Service Act, 42 U.S.C. § 300x-4(e), and the Commission on Workforce Preparedness;
 - (6) Provide for coordination and the establishment of working relationships between the Department and the Statewide Independent Living Council and centers for independent living within the State; and
 - (7) Perform such other functions, consistent with the purpose of Title I of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 29 U.S.C. § 720, et seq., as amended, as the Council determines to be appropriate, that are comparable to other functions performed by the Council.
- (d4) Resources. –
- (1) The Division shall supply all necessary clerical and staff support to the Council pursuant to G.S. 143B-14(a) and (d). The Council shall prepare, in conjunction with the Division, a plan for the provision of such resources as may be necessary and sufficient to carry out the functions of the Council under this Part. The resource plan shall, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.
 - (2) To the extent that there is a disagreement between the Council and the Division in regard to the resources necessary to carry out the functions of the Council as set forth in this Part, the disagreement shall be resolved by the Governor.

- (3) While assisting the Council in carrying out its duties, staff and other personnel shall not be assigned duties by the Division or any other agency of the State that would create a conflict of interest.

(d5) Member Conflict of Interest. – No member of the Council shall cast a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest under State law.

(e) Council members shall be reimbursed for expenses incurred in the performance of their duties in accordance with G.S. 138-5. In addition, Council members may be reimbursed for personal assistance services that are necessary for members to attend Council meetings and perform Council duties. These expenses shall not exceed whichever is lower, the actual cost of the services or the Medicaid rate per day for personal assistance services, in addition to subsistence and travel expenses at the State rate for the attendant.

(f) Repealed by Session Laws 1993, c. 248, s. 1. (1991 (Reg. Sess., 1992), c. 900, s. 150; 1993, c. 248, s. 1; 1997-443, s. 11A.118(a); 1997-509, s. 1; 1999-161, s. 2; 2009-570, s. 8(e); 2017-134, s. 5(a).)

§§ 143-549 through 143-551. Reserved for future codification purposes.